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April 19, 2020

Hon. John Michael Vazquez
U.S. District Court for the District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Room 4015
Newark, NJ 07101

Via ECF

Re: ***Sanchez v. Decker, et al.*, No. 2:20-cv-04269-JMV**
Petitioner's Request for Release on Reasonable Conditions

The undersigned represent Petitioner Felix Sanchez in the above-captioned matter. We write to provide the Court with additional information regarding Petitioner's conviction history, rehabilitation, medical needs, and agreement to comply with any conditions of release set by the Court.

As this Court noted during the conference on April 16, 2020, Mr. Sanchez is a longtime lawful permanent resident who came to the United States with his family at the age of seven. A full list of Mr. Sanchez's convictions is appended at Exhibit B. Mr. Sanchez presents neither a risk of danger nor flight and thus merits release on his own recognizance.[1] Nonetheless, should this Court find conditions of release necessary to secure Petitioner's appearance at future proceedings, Petitioner proposes the following conditions:

- Telephonic monitoring as required by ICE;
- "Standard release conditions" that require Petitioner to comply with all criminal laws and report to all court hearings; and
- Compliance with all national, state, local and CDC-issued guidelines regarding COVID-19.

I. Mr. Sanchez does not pose a flight risk or danger to the community that necessitates additional conditions of release.

Mr. Sanchez does not pose a risk of danger to the community. He is currently detained under 8 U.S.C. § 1226(c) due to his 2014 convictions for forgery- and identity theft-related

[1] Other district court decisions have ordered medically vulnerable immigrant detainees released on their own recognizance notwithstanding their past criminal history. *See, e.g.*, *Bravo Castillo v. Barr*, --- F. Supp. 3d ---, 2020 WL 1502864, at *5-*6 (C.D. Cal. Mar. 27, 2020) (recognizing that the noncitizens had completed the terms of their criminal sentences); ECF No. 2-6, *Fraihat v. Wolf*, No. ED CV 20-00590TKH (KSx) (C.D.Cal. Mar. 30, 2020) at 10-11 (ordering release despite "immigration judges' findings that [the petitioner] is a danger to the community").

offenses. Mr. Sanchez has not been convicted of any offense since 2014, and had been released from criminal custody and parole before being apprehended by ICE. None of Mr. Sanchez's other convictions render him removable from the United States nor subject him to any detention by immigration authorities.

Moreover, Mr. Sanchez has spent considerable effort and time addressing the history of trauma and related substance use underlying his conviction history. When Mr. Sanchez was a teenager, he experienced an event which traumatized him for years: he was sexually assaulted at gunpoint by an adult whom he trusted; that man threatened him if he ever spoke about the assault. Mr. Sanchez coped with the trauma by drinking; consequently, between the ages of 19 and 24, he was convicted multiple times for driving under the influence. In 2013, Mr. Sanchez became involved in an arrangement to use false credit cards to rent and resell automobiles. He was arrested and convicted of multiple forgery- and identity theft-related offenses within a two-month period. He was sentenced to concurrent sentences of 6 months, 1 year, and 2-4 years' imprisonment, which he served at Washington Correctional Facility in Comstock, New York.

While in prison, Mr. Sanchez participated in Alcohol and Substance Abuse Treatment (ASAT), an intensive substance abuse program which met five times per week for six months.[2] He not only graduated from the program but also took on a leadership role mentoring newer participants. Mr. Sanchez began to understand the relationship between his childhood trauma, substance use, and criminal conduct. He spoke to his family about the assault and committed himself to sobriety. Mr. Sanchez was granted parole at his first parole appearance and was released from prison in February 2017. *See* Ex. C, DOCCS Inmate Lookup (confirming Mr. Sanchez "merit[ed] release to parole").

For the next two years, he focused on his family, sobriety, health, maintaining stable employment, and parole requirements. He was discharged from parole on February 8, 2019. *See* Ex. D, Letter from Senior Parole Officer (confirming discharge). Three days later, he was arrested by ICE and detained at the Bergen County Jail. ICE charged him as deportable because his 2014 convictions constituted deportable offenses under the Immigration and Nationality Act. 8 U.S.C. §§ 1227(a)(2)(A)(ii), (iii). Mr. Sanchez has filed a motion to vacate two of these convictions pursuant to N.Y. Crim. Proc. L. § 440.10. This post-conviction relief case is currently pending before the Suffolk County District Court; if granted, Mr. Sanchez may be able to move to terminate his removal proceedings altogether or to remand his case to pursue additional forms of relief.

The New York State parole board already determined that Mr. Sanchez is not a danger to society, and his discharge from parole is evidence thereof. Furthermore, since being diagnosed with cancer, Mr. Sanchez has been laser-focused on maintaining his physical health, to the extent possible in detention.

Upon release, Mr. Sanchez plans to live with his lawful permanent resident (LPR) parents in Bay Shore, New York. *See* Ex. A, Declaration of Mr. Sanchez at ¶ 21 (Pet'r Decl.); Ex. E, Letter from Mr. Sanchez's Mother. His parents' home has a separate basement unit where he intends to self-isolate. Pet'r Decl. ¶ 21. His sister is a registered nurse and is committing to helping to care for him. *Id.* Immediately upon release, the undersigned will work with Mr. Sanchez and his family to schedule a telehealth visit with a specialist in Mycosis Fungoides to determine the correct next steps for his cancer treatment, given the lapse in care while detained.[3] *See* Felix S. 1 at 1; Felix S. 3 at 57, 59 (confirming Mr. Sanchez has missed at least twelve scheduled appointments for treatment); Pet'r Decl. ¶¶ 8-11 (describing lapse in care).

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[2] Information about the ASAT program is available at https://doccs.ny.gov/alcohol-and-substance-abuse-treatment-asat.

II. ATD electronic bracelet monitoring is not necessary and will interfere with Mr. Sanchez's cancer treatment.

Due to Mr. Sanchez's medical condition, ATD electronic bracelet monitoring is neither appropriate nor practical. In order to continue treating his skin cancer, Mr. Sanchez must undergo radiation therapy three times per week, which requires patients to enter the radiation booth nude. Pet'r Decl. ¶ 5. He would thus need to remove the bracelet monitor every time he receives treatment. A bracelet monitor could also irritate and exacerbate the skin atrophy (i.e., thinning) and sensitivity that Mr. Sanchez suffers as a consequence of his cancer and treatment.

III. ICE should not be permitted to redetain Mr. Sanchez at any point unless he violates the conditions of release.

Should the Court grant Petitioner's request for preliminary relief, the Court should also prohibit ICE from redetaining him unless he violates the conditions of his release. Even if the New Jersey shelter-in-place order is lifted, the public health crisis will affect detention facilities like the Bergen County Jail in a disproportionate manner because detainees are prevented from taking many of the precautions that the general public is able to exercise. In addition, Mr. Sanchez faces increased risk of severe illness or death if he is exposed to COVID-19; his return to a communal living environment, such as the Bergen County Jail, presents a higher risk to his health and safety than is faced by the general public in returning to work and other activities. Additionally, Respondents have already failed to ensure continuity of Mr. Sanchez's cancer treatment. If redetained, Mr. Sanchez will once again be denied critical care to manage and treat his condition.

Moreover, supervised release under the requested conditions will effectively serve the government's interests in preventing danger and flight risk. Expert opinions and reports confirm that "[a]lternatives to detention, including supervised release . . . are a highly effective method of managing immigration cases without either unnecessary pretrial detention or risk to public safety or risk of failure to appear for court hearings. Compliance rates with supervised release are extremely high." ECF No. 1-10, Declaration of Dr. Dora Schriro, *Salazar v. Tsoukaris*, Case No. 2:20-cv-03382 (D.N.J.); *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that the Intensive Supervision Appearance Program "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). Mr. Sanchez himself has already

[3] Mr. Sanchez's parents reside 25 minutes away from Stony Brook Dermatology Associates, a medical center that provides on-site phototherapy treatment. The undersigned has contacted their office regarding scheduling a new patient intake for Mr. Sanchez.

shown his willingness to comply with conditions of supervised release, through his discharge from parole.

IV. Mr. Sanchez should not be subject to any form of house arrest that is more restrictive than New Jersey's shelter-in-place order.

Should the Court order Mr. Sanchez released to house arrest, the undersigned requests that any order of home confinement be consistent with the shelter-in-place order in effect under Executive Order No. 107, which permits individuals to leave their homes for, inter alia:

- "obtaining goods or services from essential retail businesses";
- "seeking medical attention, essential social services, or assistance from law enforcement or emergency services";
- "visiting family or other individuals with whom the resident has a close personal relationship";
- "walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart"; and
- "leaving because of a reasonable fear for his or her health or safety."[4]

Imposing a more restrictive form of house arrest will harm Mr. Sanchez by exacerbating his pre-existing anxiety and negatively impacting his mental health. Indeed, the Centers for Disease Control specifically recommends that individuals find ways to reduce stress, including by exercising regularly.[5] Given Mr. Sanchez's need to maintain his physical health, outdoor exercise—following best social distancing practices and remaining close to his home—is critical to his health.

At the heart of Mr. Sanchez's substantive due process claim is his right to be free from unlawful punishment. ECF No. 1 at 2-31. In general, house arrest is a form of criminal punishment that is rarely used in the context of civil detention. Indeed, under federal sentencing guidelines, home detention is classified as a sentencing option to be "imposed . . . only as a substitute for imprisonment." U.S.S.G. § 5F1.2. The Third Circuit has also recognized home confinement as a form of "imprisonment" because "home confinement with monitoring is a *serious restriction of liberty*." *Ilchuck v. Att'y Gen.*, 434 F.3d 618, 623 (3d Cir. 2006) (emphasis added). Accordingly, this Court should order preliminary relief[6] by ordering release without imposing a form of house arrest that extends beyond the confines of New Jersey's shelter-in-place order.

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[4] Exec. Order No. 107, https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf.
[5] Centers for Disease Control, *Stress and Coping*, https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html.
[6] *Cf. Ortho Pharm. Corp. v. Amgen, Inc.*, 882 F.2d 806, 813 (3d Cir. 1989) (explaining that the purpose of the four-factor test for a preliminary injunction is to "enable the court, on the basis of the data before it, 'to attempt to *minimize the probable harm to legally protected interests* between the time that the motion for a preliminary injunction is filed and the time of the final hearing'") (citation omitted) (emphasis added).

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For all of the foregoing reasons, Mr. Sanchez respectfully requests that the Court issue an order (a) granting Mr. Sanchez supervised release, consistent with any applicable shelter-in-place order, with no additional requirement of home confinement, and (b) prohibiting Respondents from redetaining Mr. Sanchez during the pendency of this habeas proceeding absent a violation of the conditions of release.

Dated: Apr. 19, 2020

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Exhibits Attached:

Exhibit A: Declaration of Mr. Sanchez;

Exhibit B: List of Mr. Sanchez's convictions;

Exhibit C: New York Dep't of Corrections and Community Supervision (DOCCS) Inmate Lookup Printout;

Exhibit D: Letter from Senior Parole Officer, NY DOCCS; and

Exhibit E: Letter from Mr. Sanchez's Mother.